

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RENARD BROOKS JR.,

Petitioner,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

Case No. 1:22-cv-01414-EPG-HC

FINDINGS AND RECOMMENDATION TO
DISMISS PETITION FOR WRIT OF
HABEAS CORPUS

ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE

Petitioner Renard Brooks Jr. is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. As Petitioner previously sought federal habeas relief with respect to the convictions challenged in the instant petition, the undersigned finds that dismissal of the petition is warranted pursuant to 28 U.S.C. § 2244(b) as an unauthorized successive petition.

I.

DISCUSSION

Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a habeas petition and allows a district court to dismiss a petition before the respondent is ordered to file a response, if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.” Rule 4, Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254.

A federal court must dismiss a second or successive petition that raises the same grounds as a prior petition. 28 U.S.C. § 2244(b)(1). The court must also dismiss a second or successive

petition raising a new ground unless the petitioner can show that (1) the claim rests on a new, retroactive, constitutional right, or (2) the factual basis of the claim was not previously discoverable through due diligence, and these new facts establish by clear and convincing evidence that but for the constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense. 28 U.S.C. § 2244(b)(2)(A)–(B). However, it is not the district court that decides whether a second or successive petition meets these requirements.

Section 2244(b)(3)(A) provides: “Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” In other words, a petitioner must obtain leave from the Ninth Circuit before he can file a second or successive petition in district court. See Felker v. Turpin, 518 U.S. 651, 656–57 (1996). This Court must dismiss any second or successive petition unless the Court of Appeals has given a petitioner leave to file the petition because a district court lacks subject-matter jurisdiction over a second or successive petition. Burton v. Stewart, 549 U.S. 147, 157 (2007).

Here, Petitioner challenges his 2014 Fresno County Superior Court convictions for which he was sentenced to life in prison with the possibility of parole. (ECF No. 1 at 2.)¹ Petitioner previously sought federal habeas relief in this Court with respect to the same convictions. See Brooks v. Bider, No. 1:18-cv-00883-LJO-JLT (denied on the merits); Brooks v. People of the State of California, No. 1:21-cv-01443-DAD-SKO (dismissed as successive).² Thus, the Court finds that the instant petition is “second or successive” under 28 U.S.C. § 2244(b).

Petitioner claims that he “presents ‘new Evidence’ to this court that is of such decisive force and value that it would have more likely than not changed the outcome at trial.” (ECF No. 1 at 3.) Even if the petition raises claims for relief based on newly discovered evidence, it is not the district court that decides whether a second or successive petition meets the requirement of 28 U.S.C. § 2244(b)(2)(A)–(B). As Petitioner has already filed a federal petition for writ of habeas corpus regarding his 2014 Fresno County Superior Court convictions, Petitioner cannot

¹ Page numbers refer to ECF page numbers stamped at the top of the page.

² The Court may take judicial notice of its own records in other cases. United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 file another petition in this Court regarding the same convictions without first obtaining
2 permission from the United States Court of Appeals for the Ninth Circuit. Here, Petitioner makes
3 no showing that he has obtained prior leave from the Ninth Circuit to file this successive petition.
4 Therefore, this Court has no jurisdiction to consider Petitioner's renewed application for relief
5 under 28 U.S.C. § 2254 and must dismiss the petition. See Burton, 549 U.S. at 157.

6 **II.**

7 **RECOMMENDATION & ORDER**

8 Accordingly, the undersigned HEREBY RECOMMENDS that the petition for writ of
9 habeas corpus be DISMISSED as an unauthorized successive petition.

10 Further, the Clerk of Court is DIRECTED to randomly ASSIGN a District Court Judge to
11 the present matter.

12 This Findings and Recommendation is submitted to the assigned United States District
13 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
14 Rules of Practice for the United States District Court, Eastern District of California. Within
15 **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may file
16 written objections with the court and serve a copy on all parties. Such a document should be
17 captioned "Objections to Magistrate Judge's Findings and Recommendation." The assigned
18 United States District Court Judge will then review the Magistrate Judge's ruling pursuant to 28
19 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified
20 time may waive the right to appeal the District Court's order. Wilkerson v. Wheeler, 772 F.3d
21 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22 IT IS SO ORDERED.
23

24 Dated: **November 28, 2022**

25 /s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE